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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,792	11/16/2000	Mary Collins		3965

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FITZPATRICK CELLA (WYETH)
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EXAMINER

HAMUD, FOZIA M

ART UNIT PAPER NUMBER

1647

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/714,792

Applicant(s)

COLLINS ET AL.

Examiner

Fozia M Hamud

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 18, 41, 46-49, 51, 53-57, 59, 61-65, 67, 69, 78-81, 83, 85-94, 96-104 are allowable.

Claim(s) objected to: _____

Claim(s) rejected: 105-131.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 09/13/04.
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): The rejection of claims 62-65, 67-69, 78-81, 83-85, 89-96, 101-104 made under 35 U.S.C. 112, first paragraph has been overcome, because the claims no longer recite "biologically active fragment". Also all the rejections made against canceled claims 50, 52, 60, 68, 84 and 95 have been overcome. Also the rejection of claims 78-81, 83-85, 101 and 102 made under 35 U.S.C. 112, second paragraph has been overcome. The new claims 105-131 are not enabled under 35 U.S.C. 112, first paragraph, because the instant specification does not disclose a method of treating cancer by administering antibodies that bind to human IL-13bc of SEQ ID NO:4. Applicants submit post filing date references that demonstrate that IL-13Rbc is expressed in high levels in cancers such as glioma or neuroblastomas and that anti-IL-13 Rbc antibodies might be useful. However, treating these specific cancers is new matter that was never disclosed by the instant specification at the time of filing.



JANET ANDRES
PRIMARY EXAMINER